WP(C) 7489/2002
BEFORE
THE HON'BLE MR JUSTICE B.K. SHARMA

1. This writ petition is directed against the award dated 19.01.2002 passed by the learned Labour Court, Dibrugarh in Reference Case No. 02/1999 answering the following reference in favour of the management and against the workmen.

1) Whether the management of Halmira Tea Estate, P.O. Golaghat, Assam is justified in deducting pay and allowances, Ration and other benefits of their staff members of the lock-our period, i.e. from 13.05.1997 to 27.05.1997 ?
2) If not, are the staff members of Halmira Tea Estate entitled to get any other relief thereof for the lock-out period ?

2. I have heard Ms. A. Bhattacharyya, learned counsel for the petitioner as well as Mr. G.N. Sahewalla, learned Sr. counsel assisted by Ms. K. Kalita, learned counsel for the management. I have perused the entire materials including the records received from Labour Court.

3. Shortly stated the facts leading to filing of the instant writ petition are that the respondent management (respondent No. 1) had declared lock out in its Tea Estate w.e.f. 12.09.1997 following an incident of Gherou to the managerial staff by some of workmen of the Tea Estate. Such Gherou was for a dispute relating to appointment of Welfare Officer by the Tea Estate.

4. Lock out was effected from 12.05.1997 and continued upto 28.05.1997 on which date it was lifted. However, according to the petitioner, the management very illegally deducted the wages, ration, bonus and other benefits from the workmen, i.e. the members of the petitioner's Sangha for the said period. Consequently, a dispute was raised over such illegal deduction. Conciliation proceeding was also held which resulted in failure. Ultimately the Govt. of Assam referred the above quoted dispute to the Labour Court, Assam at Dibrugarh vide notification dated 22.09.1999. The dispute referred to the Labour Court was registered as Reference Case No. 2/1999 and upon issuance of notice to the parties, they entered appearance and filed their respective written statement.

5. In the proceeding before the Labour Court, the Management examined two witnesses, while the petitioner's Sangha examined one witness. According to the petitioner, the lock out declared by the Management was unjustified. It is their case that the staff members were no way involved and consequently they could not have been deprived of their wages and other service benefits. It is the stand of the petitioner that each and every member is no way connected with the demands raised by some of the labourers over the appointment of the Welfare Officer which led to the agitation and consequent lock out. The case of the petitioner is that the learned Labour Court totally overlooked the relevant aspects of the while passing the impugned award. The petitioner has specifically referred to the statements made by the Management in their written statement in paragraph-11 which is quoted below:

That the entire episode was to the knowledge of the staff members and instead pacifying the workers they all stood as silent spectators of Hooliganisms.

6. In the written statement filed by the petitioner it was stated that they were not party to the incident. On the other hand, in the written statement filed by the Management, referring to the particular incident and the lock out effected on 12.05.1997, it was stated that the entire incident was with the knowledge of the staff members who instead of stopping the workers stood silent spectators of the Hooliganism thereby extending the tacit support to the same.

7. In support of the petitioner's case, Ms. A. Bhattacharyya, learned counsel for the petitioner has placed reliance on the decisions reported in 1930 PV Council 57(2) and AIR 1968 SC 1083 (Om Prabha Jain vs. Abnosh Chand and anr).These decisions have been referred to so as to contend that learned Labour Court could not have gone beyond the pleadings.

8. On the other hand, Mr. Sahewalla, learned Sr. counsel assisted by Mr. K. Kalita, learned counsel for the respondent Management placed reliance on the decision reported in (1996) 11 SCC 319 (HMT Ltd. vs. HMT Head Office Employees' Association and ors.) and AIR 1960 SC 893 (Management of Kairbetta Estate, Kotagiri vs. Rajamanickam) so as to contend that once the lock out was held to be valid, as natural consequence, the loss of the wages, ration, bonus and other benefits entail.

9. The issue involved in this proceeding is the determination as to whether the members of the petitioner's Sangha were responsible for the incident which led to the lock out or not. While it is the case of the petitioner that the staff members were no way connected to the incident, it is the case of the respondent Management that they were very much part and parcel to the incident which led to the lock out. According to the petitioner, there are two categories of workers in the Estate, i.e. Mazdoor and staff members, with separate unions and the nature of their works are also different. It is the stand of the petitioner that if any trouble was created, it was by the Mazdoors and not at all by the members of the petitioner's Sangha.

10. It will be pertinent to mention here that the petitioner never disputed the reasons for declaration of lock out as noted above. Their only plea is that they were not responsible for the incident which led to declaration of lock out in the Tea Estate. MW 2 in his deposition stated that some of the staff members were also involved in ransacking the house of the Executive Officer, dragging him out of the house and assaulting him in the public. His categorical statement is that one Shri Markendoi Rai, Union Secretary of the petitioner's Sangha is one of the rioteers. The testimony of MW 2 and his letter (Exbt. 2) clearly proved that some of the staff members were also responsible for declaration of the lock out.

11. The aforesaid stand of the Management is confronted by the petitioner on the ground that such testimony is beyond the pleadings. As to what is the pleading in their written statement submitted by the Management, has been noted above. While it is true that in the written statement the Management stated about unruly behaviour of the workers without specifically mentioning about the staff members, but in my opinion expression workers would also include the staff members. Although the learned counsel for the petitioner by referring to ABITA Circular No. LDG. 59 dated 14.09.56 argued that the staff members are excluded from the definition of labourers, but the same cannot by itself lead to the interference that the expression workers would not take into its fold both the categories, i.e. workmen and staff members in reference to the particular incident which resulted in the lock out. That apart, in paragraph-11 of the written statement it was stated by the Management that the staff members instead of stopping the workers remained silent spectator of the Hooliganism. Thus, there was approval of the hooliganism in which the workmen were involved.

12. In HMT Ltd. (supra), it was held by the Apex Court that once the strike had been held to be illegal, no wages for the strike period could have been awarded in favour of the workers. In the instant case, the lock out and its validity is not under challenge. In Management of Kairbetta Estate (supra), it was held by the Apex Court that the respondents were not entitled to claim lay off compensation. It was held that lock out in the case was not lay off and thus, the respondents were not entitled to claim lay off compensation. As in the instant case, in the said case also, the lock out was held to be fully justified. As in the i

nstant case, in the said case also the appellant's Manager had been violently at tacked and the other members of the staff working in the division were also thre atened by the respondents.

13. Contrary to the stand of the petitioner, its witness, WW 1 in his depos ition (cross examination) categorically stated that he had seen the officers of the Tea Estate being dragged on and confined. He also admitted as to how the wo rkers created nuisance even in the establishment of the District Judge. He furth er admitted that the staff members did not resist such workers. He also admitte d that the members of the staff did not inform the police. Be it stated here tha t when the incident occurred, WW 1 was the President of the petitioner's Sangha. He also admitted that in Exhbt. 2 involvement of the staff members was shown. A lthough in his cross examination he stated about furnishing reply to the said Ex hibt. 2, but he admitted that same was not produced in the Court. He also admitt ed that although during the lock out period office staff had allegedly attended the office, but could not perform duty and the same was intimated in writing, bu t no such letter was produced before the Court.

14. From the above evidence against the petitioner's Sangha, there is no man ner of doubt that the office staff were also involved in the incident either act ively or passively without any justification. Consequently, it cannot be said th at they are not involved in the incident and thus are entitled to service bene fits for the lock out period.

15. Learned Labour Court has discussed all the above aspects of the mater in its impugned award and I see no reason to interfere with the same.

16. In view of the above, I do not find any merit in the writ petition and a ccordingly it is dismissed.